

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

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SUBJECT: Staff Report and Recommendation on Revised Permit Fees
(For Commission consideration on November 6, 2003)

Summary and Recommendations

The staff recommends that the Commission: (1) consider revising its permit fee schedule so that permit applicants pay a greater portion of BCDC's permit processing costs; and (2) after holding a public hearing on possible permit fee increases, direct the staff to develop amendments to the Commission's regulations so that the permit fees will recover an appropriate percentage of BCDC's permit costs.

Staff Report

Background. The Commission's strategic plan includes the following two objectives dealing with BCDC's permit fees:

Assess Permit Fee Levels. By December 31, 2003, the staff will provide the Commission with a report comparing the cost of the Commission's permit operations with the revenue generated by permit fees, comparable fee schedules of other state and local government agencies, optional permit fee schedules and an assessment of how much additional General Fund revenue would be generated by each schedule.

Increase Permit Fees. By June 30, 2004, the Commission will provide the staff with policy guidance on revising BCDC's regulations to amend the Commission's permit fee schedule so that the fees generate a minimum established percentage of the cost of operating BCDC's permit program.

The following information is being provided to achieve the first objective. Regarding the second objective, in light of the continuing projected shortfalls in State General Fund revenue, the staff believes the Commission should accelerate its consideration of increasing its permit fees as a means of generating additional General Fund income. Therefore, the staff recommends that after holding a public hearing on this report, the Commission should determine an appropriate percentage target of BCDC's permit operation costs that should be covered by permit fees and direct the staff to revise the Commission's regulations to amend BCDC's permit fee schedule accordingly.

General Fund Revenue. As the following table illustrates, BCDC relies on appropriations from the State General Fund as the primary source of revenue to support the Commission's pro-



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grams. As a result, when General Fund revenues decline, BCDC's operations—along with those of most other General Fund-supported agencies—have been adversely impacted. For example, over the past two years General Fund support for BCDC has declined over 22.6 percent from \$3,751,000 in FY 01-02 to a projected \$2,904,720 in FY 03-04.

FY 03-04 BUDGET SUMMARY		
Program	Cost	Percentage
Permits	\$1,158,798	28.5 %
Enforcement	\$334,442	8.2 %
Planning	\$1,015,754	25.0 %
Legal and Legislative Support	\$361,969	8.9 %
Administrative Support	\$833,227	20.5 %
Executive Management	358,947	8.9 %
Total	\$4,063,137	100.00%
Revenue Sources		
General Fund	\$2,904,720	71.5 %
Bay Fill Clean-Up & Abatement Fund	\$129,680	3.2 %
CZMA Grants	\$463,837	11.4 %
Caltrans	\$144,000	3.5 %
Department of Fish & Game	\$170,900	4.2 %
Coastal Impact Assistance Program	\$170,000	4.2 %
Coastal Conservancy	\$80,000	2.0 %
Permit Fees	(\$129,000)	N/A
Fines and Penalties	(\$60,000)	N/A
Total	\$4,063,137	100.00%

Grants, Reimbursements and Contract Revenue. In an attempt to reduce its reliance on General Fund revenues, in the early 1990s the Commission directed its staff to embark on a entrepreneurial campaign to secure grants, reimbursements, contracts and other sources of funding. Although this campaign has been effective and continues, the Commission still relies on the General Fund for the bulk of its financial support. Grants, reimbursements and other such sources of funds are typically provided for special projects, not for general support of BCDC's core operations. As a result, the staff positions supported by these funds must provide specified services or carry out particular projects. If the project is phased out or the funding disappears, so does the job. Thus, while grants and reimbursements can provide an interim boost to BCDC's operating level, they are fundamentally unpredictable and, as such, an inherently unreliable source to count on as a means of funding the Commissions continuing activities.

Income Revenue. BCDC collects three types of revenues from interests doing business with the Commission: (1) reimbursements for the cost of processing Bay Plan amendments proposed by outside interests; (2) fees for processing permit applications; and (3) fines and penalties

assessed for violations of the laws administered by the Commission. The reimbursements received by the Commission for processing Bay Plan amendments are based on the Commission's actual cost of the handling the amendment request and are retained by the Commission. However, the Commission does not retain either permit fees or penalties to support its operations. By law, the permit fees must be deposited in the State General Fund, and penalty fines must be deposited in the Bay Fill Clean-up and Abatement Fund. As the budget summary on page 2 illustrates, through appropriations to BCDC by the Legislature the Commission gets far more in financial support from State sources than BCDC generates in revenue for the State.

Despite the advantages to BCDC of the current financial arrangement, every few years the Commission has considered the idea of retaining its permit fees and using the money to support its permit operations. This approach would have the advantage of reducing BCDC's reliance on appropriations from the State General Fund. However, there are a number of disadvantages to this idea.

First, legislation would have to be passed to allow BCDC to retain its permit fees.

Second, there is some likelihood that the Legislature would reduce BCDC's General Fund appropriation by whatever amount of permit fees the Commission retains.

Third, the fees collected by the Commission would have to be increased substantially to make BCDC's permit program self-sufficient.

Fourth, if the Commission relies principally on permit fees for revenue to support BCDC's permit operations, the number of staff assigned to processing permits would have to be commensurate with the permit fees collected each fiscal year. If permit fee revenues decline, as is often the case during an economic downturn, the Commission would have to quickly cut expenditures, a difficult prospect under the State's fiscal and personnel management rules.

Fifth, the correlation between permit fee revenues and permit workload is imperfect. Pre-application review and assistance on projects requires a substantial investment of staff resources. This work is carried out months, or even years, before an application is submitted and a permit fee charged. Other projects, which require pre-application review, are abandoned before reaching the need to apply for a BCDC permit, and generate no revenue for the Commission. Also, when the economy slows, project sponsors often delay filing permit applications, which trigger the payment of permit fees, yet continue working with BCDC's staff on refinement of project designs. Similarly, during economic recovery, the number of projects submitted to the staff for preliminary review increases more quickly than does the level of permit fees collected.

Finally, a legitimate public policy question would be raised if permit applicants are required to pay the entire cost of a program whose benefits accrue to society as a whole.

Finding that the disadvantages of retaining its permit fees far outweigh the advantages, the Commission has never sponsored legislation that would allow BCDC to retain its permit fees.

BCDC's Fee Schedule. The Commission last revised its permit fee schedule in 1991 in response to a recommendation from the Legislative Analyst that BCDC's permit fees should generate revenue equal to about 20 percent of BCDC's permit costs, rather than the 6 percent as was then the case. In 1995, the Office of the Legislative Analyst suggested that the Commission go even further. As part of an overall assessment of options for balancing the budget, the Analyst noted that "[f]ees recover only a small percentage of the BCDC's permitting costs" and suggested that the State could save several million dollars if those fees could be raised to a level sufficient to recover *all* of BCDC's General Fund support. At the time, permit fees generated around \$90,000 annually and BCDC's total budget was approximately \$2.5 million, \$1.55 million of which came from General Fund revenues. For BCDC to generate enough revenue to eliminate the need for General Fund support for BCDC as suggested by the Legislative Analyst, the fees would have to be increased to more than 17 times their then-current levels. As a result, the \$5,000 fee for a \$5 million project would have had to be raised to \$85,000.

Faced with heavy opposition from permit applicants and no assurance that BCDC would be the direct beneficiary of an extraordinary increase in its permit fees, the Commission decided to not make any further revisions in its permit fee schedule.

The following table shows BCDC's current fee schedule which, as noted, was last revised in 1991. This schedule is expected to generate about \$129,000 in revenue in the current fiscal year, which amounts to about 11.1 percent of the *direct* \$1,158,798 cost of BCDC's permit program¹. Thus, cost increases over the past 12 years have eroded the relationship the Commission embraced in 1991 when it set a target of generating revenue that amounts to 20 percent of its permit program costs.

An important caveat should be added at this point: *indirect* costs significantly increase the real cost of the Commission's permit program. When administrative overhead, management costs and legal support are added, the total cost of the Commission's permit program in the current year will come to about \$1,876,581. Permit fees will generate revenue that amounts to only 6.9 percent of the full cost of BCDC's permit program.

BCDC PERMIT FEE SCHEDULE	
The first time extension to a permit:	\$50
A non-material amendment to a permit other than the first time extension:	\$100
An activity authorized under a regionwide permit:	\$100
A minor repair or improvement with a total project cost (TPC) of:	
• Less than \$300,000:	\$150
• \$300,000 to \$10,000,000:	0.05% of TPC
• More than \$10,000,000:	\$5,000
Any other project that does not qualify as a minor repair or improvement with a total project cost (TPC) of:	
• Less than \$250,000:	\$250
• \$250,000 to \$10,000,000:	0.1% of TPC
• More than \$10,000,000:	\$10,000

Other Agencies Permit Fees. After the passage of Proposition 13 in 1978 most local governments in California substantially increased their permit fees, both to generate revenue to replace lost property tax revenue and to make their permit programs more self-sufficient. The fee schedules of a sampling of Bay Area local governments, along with those of two state agen-

¹ For purposes of this analysis, the "permit program" encompasses only BCDC's permit operations and does not include the Commission's enforcement activities. Although enforcement and compliance activities are integral components of any effective permit program, in this fiscal analysis it is best to keep them separate. The Legislature has appropriated revenue from the Bay Fill Clean-up and Abatement Fund to pay part of the cost of BCDC's enforcement activities. The Commission generates the revenues in the Bay Fill Clean-up and Abatement Fund through fines and penalties. Therefore, it would be inappropriate to generate revenue from BCDC's permit fees to pay for the same enforcement activities.

cies—the California Coastal Commission and the San Francisco Bay Regional Water Quality Control Board—were evaluated in the preparation of this report.

It is difficult to use the fee schedules of other organizations to directly compare their fees with those of BCDC. Nevertheless, in an attempt to provide this comparison, the staff has calculated the range of permit fees charged by each of the nine agencies for two types projects: first, at the low end of the range, the fee for an administrative permit for the smallest project or activity; and second, at the high end of the range, a major permit for a large, complex project.²

The staff provided its calculations of other agencies' permit fees to each organization for verification. However, not all of the calculations have been verified by staff from the jurisdictions charging the fees. For variety of reasons, some of the calculations may yield results that are lower than the actual fees charged. For example, some of the fee schedules provide a means of calculating a required deposit rather than the total fee. Others require additional fees for specific services, impose time and materials charges, charge for staff time at prescribed hourly rates or set pro-rata charges related to units, such as water amounts, not included in the description of the hypothetical project. As a result, the fees actually charged by other jurisdictions may be substantially more than shown in the following table. Nevertheless, the following table clearly illustrates that BCDC's fees are lower, and in some cases dramatically lower, than most other Bay Area government agencies.

COMPARISON OF PERMIT FEES		
	Administrative Permit for Small Project	Major Permit for Large Project
Bay Conservation and Development Commission	\$150	\$10,000
California Coastal Commission	\$200	\$20,000
City and County of San Francisco	\$1,045	\$2,934,411
City of Benicia	\$300	\$1,616,602
City of Berkeley	\$453	\$2,028,811
City of Fremont	\$850	\$1,595,905
County of Contra Costa	\$150	\$1,473,985
County of Marin	\$385	\$2,877,053
Regional Water Quality Control Board	\$500	\$24,500

Permit Fee Schedule Options. As noted above, the current *direct* costs of BCDC's permit program are \$1,158,798 and the total costs of the program, including overhead and indirect costs are \$1,876,581. Increasing the \$129,000 currently generated by BCDC's permit fees to generate these amounts of funding would require fee increases of nine times and 14.5 times respectively. Alternatively, the Commission could set a target of recovering half the costs of the permit program by increasing its fees by multiples of 4.5 or 7.3. Another option would be to adjust the fees so they generate 20 percent of BCDC's permit costs, as was the goal when the Commission

² For purposes of comparison, the large, hypothetical project is assumed to be a \$50 million, 200,000-square-foot retail commercial development requiring 10 acres of fill; 100,000 cubic yards of dredging; and an Environmental Impact Report which costs \$100,000 to prepare.

last revised its fee structure in 1991. This would require the fees to be increased by multiples of 1.8 or 2.9, depending on whether the Commission chooses to recover its direct permit program costs or full costs.

For purposes of this policy analysis, for a variety of reasons it is appropriate to introduce a degree of *imprecision* into the calculations. The targeted amounts, whether BCDC's direct or full permit program costs, will change from year to year. Also, the amount of money generated by permit fees changes from year to year³ and is probably more dependent on the overall number of permit applications than the internal structure of BCDC's fee schedule. Also, no data are available to assess whether one or another type of permit applications (e.g., a high volume of administrative permits versus a few permits for very large projects) generates a greater portion of BCDC's permit fee revenue. Therefore, the following tables are based on three simplified calculation rules: (1) BCDC's current fees are multiplied by nine and 14.5, respectively, for the fee schedules that will recover 100 percent of BCDC direct and full permit program costs; (2) the 20 percent and 50 percent cost recovery schedules are based on the full recovery schedules; and (3) all figures are adjusted upward to round numbers.

DIRECT COST RECOVERY PERMIT FEE SCHEDULE OPTIONS			
	Recover 20% of Direct Permit Costs	Recover 50% of Direct Permit Costs	Recover 100% of Direct Permit Costs
The first time extension to a permit:	\$90	\$225	\$450
A nonmaterial amendment to a permit other than the first time extension:	\$180	\$450	\$900
An activity authorized under a regionwide permit:	\$180	\$450	\$900
A minor repair or improvement with a total project cost (TPC) of:			
• Less than \$300,000:	\$280	\$700	\$1,400
• \$300,000 to \$10,000,000:	.09% of TPC	.225% of TPC	.45% of TPC
• More than \$10,000,000:	\$9,000	\$22,500	\$45,000
Any other project that does not qualify as a minor repair or improvement with a total project cost (TPC) of:			
• Less than \$250,000:	\$450	\$1,125	\$2,250
• \$250,000 to \$10,000,000:	.18% of TPC	.45% of TPC	.90% of TPC
• More than \$10,000,000:	\$18,000	\$45,000	\$90,000

³ As noted, the staff estimates that permit fees will generate about \$129,000 in revenue in FY 03-04. The actual net permit fee revenues (fees collected less refunds for abandoned or down-sized projects) for past fiscal years are:

FY 98-99: \$181,000
FY 99-00: \$176,000
FY 00-01: \$128,000
FY 01-02: \$69,000
FY 02-03: \$127,000

TOTAL COST RECOVERY PERMIT FEE SCHEDULE OPTIONS			
	Recover 20% of Total Permit Costs	Recover 50% of Total Permit Costs	Recover 100% of Total Permit Costs
The first time extension to a permit:	\$150	\$375	\$750
A nonmaterial amendment to a permit other than the first time extension:	\$300	\$750	\$1,500
An activity authorized under a regionwide permit:	\$300	\$750	\$1,500
A minor repair or improvement with a total project cost (TPC) of:			
• Less than \$300,000:	\$450	\$1,100	\$2,200
• \$300,000 to \$10,000,000:	.15% of TPC	.365% of TPC	.73% of TPC
• More than \$10,000,000:	\$15,000	\$36,500	\$73,000
Any other project that does not qualify as a minor repair or improvement with a total project cost (TPC) of:			
• Less than \$250,000:	\$750	\$1,850	\$3,700
• \$250,000 to \$10,000,000:	.3% of TPC	.75% of TPC	1.5% of TPC
• More than \$10,000,000:	\$30,000	\$75,000	\$150,000

Although none of these revised fee schedules would be out-of-line with the level of fees charged by Bay Area local governments, permit applicants would undoubtedly oppose any major increases. Also, considerably higher permit application fees could generate more enforcement problems if people choose to do work without permits rather than pay the higher fees. The Commission would receive no direct benefit because it could not retain and use the additional permit fees it generates, but by increasing its fees the Commission could make a small contribution toward helping resolve California's current fiscal dilemma.

Alternatives to Revising BCDC's Fee Schedule. Rather than revising BCDC's current permit fee schedule, the Commission could charge fees for specific activities and services that must be carried out to implement BCDC's permit process. For example, the Commission could charge a specified amount or rate for plan review, project monitoring, Design Review Board and Engineering Criteria Review Board meetings, site inspections, etc. Many Bay Area local governments utilize this approach, which results in individual permit applicants paying only for the specific services that are needed to process their particular permits. However, if BCDC employs this approach, the overall total of all the individual fees would have to be quite substantial. Therefore, the issues of ability (or willingness) to pay and the possibility of additional enforcement problems would also be raised by charging for specific permit activities. In addition, the decision to require a particular type of review or inspection would become more contentious if permit applicants are directly charged for these services. Moreover, BCDC's administrative costs would increase because a complex fee structure, detailed cost accounting, and a specialized collection program would be needed to implement a specialized cost-recovery program. Finally, there is no assurance that the costs an individual applicant would have to pay would be substantially different whether the current fee schedule is revised or whether a new fee program is devised. Therefore, if the Commission decides to generate additional revenue through permit fees, it would probably be more cost-effective to revise BCDC's current fee schedule than to develop a new, more complex fee program.

